



**Wangui v Republic (Revision Case E213 of 2023)
[2023] KEHC 24522 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24522 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
REVISION CASE E213 OF 2023
HM NYAGA, J
OCTOBER 31, 2023**

BETWEEN

CAROLINE WANGUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant has moved this court through a letter dated 10th August, 2023 seeking for revision of the Nakuru Chief Magistrate’s Criminal Case no E1826 of 2023 –*Republic v Caroline Wangui* on grounds that her conviction and sentencing is unconstitutional, un- procedural and totally in violation of the *Alcoholic Act*.
2. In the said suit the Applicant was charged with two counts. Count 1 was selling Alcoholic Drinks without Alcoholic Licence contrary to Section 62 of the *Alcoholic Act*. The particulars were that on 25th July,2023 at around 0830 hrs at Mawanga area in Nakuru North Sub- County within Nakuru County the Applicant was found selling alcoholic drinks KEG Jerican S/no EABL 21/0219114; KEG Pumps/no EABL 182558; & KEG Pumps/no EABL 1303993.
3. Count 2 was Handling food in a food plant without valid medical certificate contrary to Section 41(2) & 46 of the *Nakuru County (Public Health) Act* 2017. The particulars being that on 25th July, 2023 at around 0830hrs at Mawanga area at Nakuru North Sub-County within Nakuru County the Applicant was found operating the said premise and handling drinks in the said establishment without being medically examined.
4. On 26th July,2023 the charges were read to the Applicant and she pleaded guilty to Count 1 and not guilty to count 2. The court thereafter sentenced her to pay a fine of ksh 75,000/= in default to serve 12 months’ imprisonment in respect to Count 1 and fixed a hearing date of 20th December, 2023 for the Second Count.



Analysis & Determination

5. The only issue for determination is whether the applicant's request for an order of revision is merited.
6. Article 165(6) and (7) of the Constitution confers upon this Court supervisory jurisdiction over subordinate courts and empowers this Court to make any order to give any direction it considers appropriate to ensure fair administration of justice. The said provisions are couched in the following terms:
 - “(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) for the purpose of clause (6), the High Court may call for the record of any proceedings before any court or person, body of authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
7. As regards the Criminal Procedure Code, the correct legal provision ought to have been section 362 of the Criminal Procedure Code provides as follows:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
8. Section 367 of the Criminal Procedure Code, on the other hand, provides as hereunder:

“When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.”
9. In view of the above, it is patent that the powers of revision under section 362 of the Criminal Procedure Code are invoked to enable this Court satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any subordinate court.
10. Therefore, if the Subordinate Court's decision is wanting in its correctness, legality or propriety or the proceedings are irregular, this Court will no doubt step in and correct the same.
11. The Applicant has alleged that her conviction and sentencing is unconstitutional procedural and in violation of Alcoholic Act.
12. The law provisions in which the Applicant was charged under is Section 7(1)(b) as read with Section 62 of the Alcoholic Act no 4 of 2010. The said sections provide as hereunder;
 - “7(1) No person shall sell, dispose of, or deal with any alcoholic drink except under
 - (b) and in accordance with a licence issued under this Act.



62. Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.”

13. The court has considered the record of the proceedings on the 26th July, 2023 before the trial court. The court is guided by the proceedings as recorded. The appellant pleaded guilty in answer to the first charge and she was sentenced to pay a fine of ksh 75,000/= and in default to serve 12 months’ imprisonment.

14. The conviction and sentence, as far as I can discern, have no illegality. If the applicant was dissatisfied with the conviction and sentence of the lower court, then the only remedy available in law is to appeal and not to seek revision. In *Joseph Nduvi Mbuvi v Republic* [2019] eKLR the court stated as follows:

“In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision.”

15. In the premises, I find no merit in this application which I hereby dismiss.

16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 31ST DAY OF OCTOBER, 2023.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jennifer

Murunga for state

C/A Jeniffer

Applicant absent

